Editor's note: Appealed -- aff'd in part, Civ.No. A85-604 (D.Alaska 1988)

TULKISARMUTE NATIVE COMMUNITY COUNCIL ET AL.

IBLA 85-487 Decided August 28, 1985

Appeal from a decision of the McGrath Resource Area Manager, Anchorage, Alaska, District Office, Bureau of Land Management, approving plan of operations for placer mining claims AA-30521 through AA-30527 and AA-30657 through AA-30732.

Affirmed.

1. Mining Claims: Environment -- National Environmental Policy Act of 1969: Environmental Statements

   A finding that proposed gold dredging operations will not have a significant impact on the human environment, and that no environmental impact statement is required, is affirmed on appeal where the record establishes that relevant areas of environmental concern have been identified and the determination is the reasonable result of environmental analysis made in light of measures to minimize the environmental impact. Such a determination is not overcome by a stated difference of opinion, unsupported by independent proof, alleging the environmental analysis is erroneous.

2. National Environmental Policy Act of 1969: Environmental Statements

   Public opposition to a proposed project alone is an insufficient basis to require preparation of an environmental impact statement; such opposition does not make a proposed action controversial within the meaning of 40 CFR 1508.27(b)(4).

3. Alaska National Interest Lands Conservation Act: Generally

   Sec. 810(a) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3120(a) (1982), provides for notice, hearing, and procedural requirements where certain agency actions "significantly restrict subsistence use." Where a decision which concludes subsistence use will not be significantly restricted has reasonable support in the record, the statute does not require a hearing to be conducted.

APPEARANCES: Eric Smith, Esq., Anchorage, Alaska, for Tulkisarmute Native Community Council, et al.; Joe Sullivan, Mayor, City of Bethel; John R. White, pro se; Jeffrey W. Sanders, pro se; Robert Babson, Esq., Counsel, Department of the Interior, for Bureau of Land Management; James N. Reeves, Esq., Anchorage, Alaska, for Northland Gold Dredging Joint Venture.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Tulkisarmute Native Community Council et al., City of Bethel, John R. White, and Jeffrey W. Sanders appeal from the February 28, 1985, decision of the McGrath Resource Area Manager, Anchorage, Alaska, District Office, Bureau of Land Management (BLM). 1/ The appealed decision is an approval of a plan of operations submitted by Northland Gold Dredging Joint Venture (Northland) for placer mining operations along the Tuluksak River in western Alaska.

Northland is the present lessee and prospective developer of 77 contiguous placer mining claims on Federal lands, AA-30521 through AA-30527 and AA-30657 through AA-30732. The claims are leased from the claimant of record, Tuluksak Dredging, Ltd. The claims were located in the 1920's and 30's in the general area where Granite Creek and Dry Creek converge with the Tuluksak River. The Tuluksak River area has a rich history in gold mining operations. See General and Yearly Mining Plans, Tuluksak River Dredging Operations, Northland Gold Dredging J/V, 6 History (1983); Joseph Fisher, Dredging at Nyac, Fourth Annual Conference on Alaskan Placer Mining 27 (Univ. of Alaska - Fairbanks 1982). Several mining dredges have been employed along the Tuluksak River from 1926 through 1964. Northland renovated one of those dredges and commenced mining on the Tuluksak claims in 1981.

The scale of Northland's operations and its effects upon the environment sparked local concern and attracted attention from state and federal government agencies. Representatives of several agencies jointly investigated the operation in September 1982. As a result, Northland was cited by the Alaska Department of Fish and Game (ADF&G), for polluting an anadromous fish stream. The Environmental Protection Agency initiated proceedings against Northland for operating without a National Pollutant Discharge Elimination System (NPDES) permit. BLM sent notice to Northland of the need to prepare a mining plan of operation before it could resume dredging. Although a plan for the 1983 mining season was submitted on April 5, 1983, the dredge is operable only from May through October because of adverse weather conditions. The plan was returned by BLM for more comprehensive information. Northland conducted no mining operations on the claims in 1983 or 1984.

A detailed revised plan for the 1984 through 1988 mining seasons was submitted on December 27, 1983. Northland's proposal to dredge the placer

1/ The first notice of appeal received by BLM jointly involved Tulkisarmute Native Community Council, People of the Village of Tuluksak, Anna Phillip, and Nunan Kitlutsisti. Subsequent notices were separately received from the City of Bethel, John R. White, and Jeffrey W. Sanders. A statement of reasons was not received from Sanders. Therefore, pursuant to 43 CFR 4.412(c) and 4.402, Sanders' appeal is dismissed. The remaining appeals, for which statements of reasons have been timely received, are consolidated for this review.

claims calls for diverting 2,200 feet of the lower segment of Granite Creek and nearly 6,700 feet of the Tuluksak River. The plan proposed a relocation channel, 120 feet wide and 6,300 foot long, would be created for the Tuluksak River. Northland would dredge using a 6-cubic foot bucketline dredge and associated equipment. The plan was reviewed and modified by Federal and State agencies and comprehensive stipulations for reporting, control, monitoring and imposition of mitigating measures were added before BLM completed its evaluation of the mining plan. BLM prepared an environmental assessment (EA) for the modified plan and tentatively approved the plan on February 16, 1984. BLM's review considered the operation's foreseeable impact on the environment, including wildlife and fish habitat, vegetation, hydrological systems, and cultural and archeological resources. BLM's EA concluded that under the mining plan, as modified by the stipulations, all identifiable potential impacts would be mitigated and rendered insignificant. In its proposed decision, BLM held an environmental impact statement (EIS) was not required for a decision to approve the mining plan, as modified, and Native subsistence use would not be significantly restricted. The action was delayed for notification from the State of Alaska that the mining plan complied with the State's coastal management plan. After Alaska's notice of agreement was received, Northland's plan was approved on May 18, 1984.

BLM's decision finding no significant impact and approving the mining plan was appealed to this Board in June 1984. Upon agreement of all parties involved, the case was remanded for further consideration by order of the Board, dated November 20, 1984. Public comment on the EA and the proposed plan of operations was solicited and considered by BLM. After preparation of a supplement to the EA, BLM again approved the plan, subject to listed stipulations, on February 28, 1985. The appeal from the February 28, 1985 decision has been timely filed and, pursuant to a meritorious request by Northland, review by the Board has been given expedited consideration.

In a statement of reasons submitted on behalf of Tulkisarmute Native Community Council et al. (residents of the Village of Tuluksak), appellants assert BLM improperly approved the mining plan of operations. The Village of Tuluksak lies 30 miles west of the mining site at the confluence of the Tuluksak and Kuskokwim rivers. Appellants contend 70 percent of the village households use the river for subsistence purposes. They argue the EA prepared by BLM was inadequate, and its finding of no significant impact was improper. They claim the possible impacts of the proposed plan are severe enough to warrant preparation of an EIS. In addition to their arguments, they offer several technical reports critical of the BLM analysis of the dredging operations. Appellants have not, however, conducted any independent research, except for observations of the river made by residents of the area. In addition, appellants allege the BLM decision improperly held inapplicable the procedural requirements of the Alaska National Interest Lands Conservation Act (ANILCA) relating to Native subsistence use. Appellants conclude their arguments by claiming BLM did not follow Departmental regulations in 43 CFR Subpart 3809, by failing to provide adequate assurances that the plan will not result in undue degradation of Federal lands.

The City of Bethel, located downstream from the Village of Tuluksak on the Kuskokwim River, appears on behalf of commercial and subsistence fishing interests. Appellant city claims commercial fishing is a significant factor

in the local economy and its residents participate heavily in subsistence fishing, and the city also expresses concern over adverse impacts to its economy should the environment in the Tuluksak River area be degraded. It incorporates the statement of reasons submitted by Tulkisarmute Native Community Council et al., and additionally argues an EIS is required because the EA did not analyze important factors an EIS would address: socio-economic impacts and cumulative impacts. John R. White, a commercial and subsistence fisherman, challenges the environmental research and data used by BLM in its evaluation.

In a response to the appeals, BLM asserts the environmental issues were identified, adequately researched, and thoroughly evaluated. The agency argues the imposition of stipulations and mitigating measures upon the operation reasonably supports its finding of no significant impact and the consequent decision not to prepare an EIS. BLM claims the restrictions imposed by it and by other Federal and state government agencies will eliminate risks and reduce all potential impacts to a level of insignificance. BLM also argues that notice and hearing under ANILCA is unnecessary because a threshold determination of restricted subsistence use was not reached.

Northland, in its answer, also relies upon the several permits and approvals required by government agencies to argue the EA was adequate and the mining plan was properly approved. It emphasizes appellants' failure to directly challenge those permits at the times they were granted and characterizes the appeals as a method for circumventing the permitting decisions. Northland contends it cannot conduct an environmentally significant mining operation because of the imposed restrictions. It argues BLM is obliged to rely upon the conclusions of other agencies responsible for monitoring the operation which indicate that no significant impact will occur.

[1] Section 102 of the National Environmental Policy Act (NEPA), as amended, 42 U.S.C. § 4332 (1982), requires federal agencies to prepare an EIS for all "major federal actions significantly affecting the quality of the human environment." Resolution of the question whether a proposed action will have a significant environmental impact is the principal criterion for determining whether an agency is required to prepare an EIS. 40 CFR 1500.4(q), 1500.5(1). In order to address this threshold question an environmental review is made and an EA prepared. 40 CFR 1501.3, 1501.4(c). An EA is also a prerequisite to BLM consideration of a plan of operations. 43 CFR 3809.2-1(a). Where substantial questions are raised by the analysis as to whether a project may cause significant degradation of human environment, an EIS must be prepared. Confederated Tribes and Bands of Yakima Indian Nation v. Federal Energy Regulatory Commission, 746 F.2d 466, 475 (9th Cir. 1984). 2/

2/ The Supreme Court has offered the following guidance on NEPA:

"NEPA has twin aims. First, it 'places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action.' Vermont Yankee [Nuclear Power Corp. v. N.R.D.C., 435 U.S. 519] at 553. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.

Appellants assert the operations under the plan submitted by Northland will cause severe environmental degradation and, therefore, contend a

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fn. 2 (continued)
Weinberger v. Catholic Action of Hawaii Peace Education Project, 454 U.S. 139, 143 (1981). Congress in enacting NEPA, however, did not require agencies to elevate environmental concerns over other appropriate considerations. See Stryckers' Bay Neighborhood Council v. Karlen, 444 U.S. 223, 227 (1980) (per curiam). Rather, it required only that the agency take a 'hard look' at the environmental consequences before taking a major action. See Kleppe v. Sierra Club, 427 U.S. 390, 410, n.21 (1976)." Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc., 462 U.S. 87, 97 (1983).

"Significant impact" is the key term in a determination whether an EIS will be prepared. The dilemma of determining at what level of environmental impact an EIS is necessary was recently discussed as follows in River Road Alliance v. Corps of Engineers, 764 F.2d 445 (7th Cir. 1985):

"Although the statute does not indicate how lengthy or detailed an environmental impact statement must be, and the required length and detail will of course vary with the nature of the proposed action whose impact is being studied, the implementing regulations require a formidable document. It will often be multi-volume and cost the government and the private applicant (if there is one, as there is here) hundreds of thousands of dollars to prepare; $ 250,000 is the estimate in this case. See 33 C.F.R. § 230.11; 33 C.F.R. Part 230, App. B, paragraphs 3, 10-11. An environmental impact statement consisting of 858 pages plus two appendix volumes is mentioned in National Environmental Policy Act Oversight, Hearings Before Subcomm. on Fisheries, Etc., of H. Comm. on Merchant Marine and Fisheries, 94th Cong., 1st Sess. ser. 94-14, at 172 (G.P.O. 1975). If such a statement were required for every proposed federal action that might affect the environment, federal governmental activity and the private activity dependent on it would pretty much grind to a halt. * * * Applying for a routine permit would often be economically infeasible if an environmental impact statement were always required. So it is no surprise that the statute does not require such a statement for every federal action having some environmental impact. The action must be 'major,' and the impact 'significant.' * * *

"The purpose of an environmental assessment is to determine whether there is enough likelihood of significant environmental consequences to justify the time and expense of preparing an environmental impact statement. See also 33 C.F.R. § 230.10, * * *. The environmental assessment is a brief document, see 40 CFR § 1508.9 * * *. The statutory concept of 'significant' impact has no determinate meaning, and to interpret it sensibly in particular cases requires a comparison that is also a prediction: whether the time and expense of preparing an environmental impact statement are commensurate with the likely benefits from a more searching evaluation than an environmental assessment provides. * * *

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"Here we can get little help either from administrative regulations (such as 40 C.F.R. § 1508.27, the ambitious but nondirective effort of the Council on Environmental Quality to define 'significant' impact) or from precedent. So varied are the federal actions that affect the environment -- so varied are the environmental effects of those actions -- that the decided cases

decision on the question whether to approve the plan requires an EIS. In support of their argument, they offer technical analysis by several expert witnesses who criticize studies conducted by state and federal agencies on the Tuluksak. However, the plan approved by BLM was modified by addition of

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fn. 2 (continued)
compose a distinctly disordered array, as shown by Professor Rodgers' illuminating comparison of cases in which environmental impact statements were, and were not, held to be required. See Handbook on Environmental Law 756-61 (1977). There we read for example that an environmental impact statement is required for a government loan to build a golf course and park but not for a mock amphibious assault by a battalion of marines on a state park, or for a train shipment of nerve gas, or for certain exploratory mining operations. See id. at 758, 760-61.

"Although the heterogeneity of the cases makes generalization difficult, we find some evidence in the recent cases of a loosening of the judicial reins on agency decisions not to require environmental impact statements. See e.g., City of Aurora v. Hunt, 749 F.2d 1457, 1468 (10th Cir. 1984) (new approach procedure for Denver airport); City of New York v. Department of Transportation, 715 F.2d 732, 741-52 (2d Cir. 1983) (regulations for transporting large quantities of radioactive materials by highway); Township of Lower Alloways Creek v. Public Service Elec. & Gas Co., supra, 687 F.2d at 746-49 (expansion of a pool for storing spent fuel from nuclear reactor). Judge Friendly's interesting suggestion, made in dissent in 1972, that the meaning of 'significant' be fixed at the lower end of the spectrum that runs from 'not trivial' to 'momentous,' Hanly v. Kleindienst, 471 F.2d 823, 837, 839, (2d Cir. 1982) (dissenting opinion) -- an approach never followed in this circuit, see, e.g., Nucleus of Chicago Homeowners Ass'n v. Lynn, 524 F.2d 225, 231-32 (7th Cir. 1975); First National Bank of Chicago v. Richardson, 484 F.2d 1369 (7th Cir. 1973) -- was the product of a time when environmental impact statements were less formidable than they have grown to be, when federal agencies were less sensitive than they mostly are today to environmental concerns, and, perhaps most important, when environmental assessments involved a less elaborate procedure for determining whether there was so significant an environmental impact as to warrant the preparation of an environmental impact statement. One of the things Judge Friendly was complaining about was his brethren's stepping up the requirements for such assessments, see 471 F.2d at 836; today, for good or ill, environmental assessments are thorough enough to permit a higher threshold for requiring environmental impact statements. We note in this connection that the number of environmental impact statements filed by all federal agencies fell by 50 percent between 1978 and 1983. See Council on Environmental Quality, supra, at 333 (tab. A-81). And finally there is growing awareness that routinely requiring such statements would use up resources better spent in careful study of actions likely to harm the environment substantially. See Preservation Coalition, Inc. v. Pierce, 667 F.2d 851, 858 (9th Cir. 1982)."
764 F.2d at 448-451.

In this case it is worth noting the EA, as supplemented, is a document 114 pages in length, not counting Appendices, index, and supporting technical reports, memoranda, and analysis. Additionally, as this opinion indicates, the permits required by other governmental agencies, other than BLM, must be necessarily considered as part of the overall assessment.

BLM imposed stipulations and modifications and restrictions imposed by state and other federal agencies. When an agency finds an impact of true significance, it may require changes in the project to sufficiently reduce the potential impact to a minimum. Where a proposal is modified prior to implementation, by adding specific mitigation measures which compensate for any possible adverse environmental impacts stemming from the original proposal, the statutory threshold of significant environmental effects is not crossed and an EIS is not required. Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson, 685 F.2d 678 (D.C. Cir. 1982); Louisiana v. Lee, 596 F. Supp. 645, 657 (D. La. 1984).

In William E. Tucker, 82 IBLA 324 (1984), the Board reviewed a similar finding of no significant impact for a proposed mining plan of operations. The record indicated the mining operation had previously resulted in increased stream turbidity and concern was expressed over future environmental degradation, including loss of fishery habitat. The appellants argued that "the magnitude of future operations, the 'irresponsible' attitude of the mining operator, and the continued impact on the environment belie a finding of no significant impact under the proposed mining operation." Id. at 327. In concluding that mitigation measures drastically amended the final environmental picture, the Board reasoned:

> The reasonableness of a finding of no significant impact has been upheld where the agency has identified and considered the environmental problems; identified relevant areas of environmental concern; and made a convincing case that the impact is insignificant, or if there is significant impact, that changes in the project have sufficiently minimized such impact. Como-Falcon Coalition, Inc. v. United States Department of Labor, 465 F. Supp 850 (D. Minn. 1978), aff'd as modified, 609 F.2d 342 (8th Cir. 1979), cert. denied, 446 U.S. 936 (1980). In such circumstances, we will affirm a finding of no significant impact. John A. Nejedly, 80 IBLA 14 (1984).
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> The EA identifies certain environmental impacts resulting principally from stream sedimentation, which would be significant if not mitigated. However, the EA also sets forth certain mitigating measures which would control sediment runoff. These measures were then incorporated in the finding of no significant impact and the letter approving Bora Bora's plan of operations. Appellants have provided no evidence that these measures are not adequate to reduce environmental impacts to an insignificant level.

Id. at 327. The Board held the record supported a finding that the proposed operations, conducted pursuant to the plan containing the specified stipulations, would not significantly affect the quality of the human environment. Id. at 328.

The discussion in Tucker focused primarily upon the restrictions formulated by BLM as a result of its analysis. The case at issue goes beyond

the circumstances described in Tucker because of the number of stipulations and mitigating measures imposed upon Northland's plan from a variety of government sources. BLM's review of the plan of operations represents the last step required of the would-be operator to comply with pertinent statutes and regulations. To illustrate, the following permits or approvals have been obtained by Northland:

(1) NPDES permit (section 402 of the Clean Water Act, as amended, 33 U.S.C. § 1342 (1982)). It is unlawful to discharge into a river without such a permit. As a result of litigation stemming from purported violations by Northland, permission for operations under the NPDES permit and the proposed plan were conditioned upon stipulations and mitigating measures formulated by the Environmental Protection Agency and appearing in a consent decree approved on May 30, 1984, by the United States District Court, District of Alaska. The restrictions were designed to prevent degradation to the Tuluksak River and minimize adverse impacts. United States v. Northland Dredging, Ltd., Civ. No. A 83-350, Consent Decree, at 5-6 (D. Alaska May 30, 1984).

(2) U.S. Army Corps of Engineers permit (section 404 of the Clean Water Act, as amended, 33 U.S.C. § 1344 (1982)). Movement of materials in or near navigable water bodies requires such a permit. The Corps conducted an environmental assessment and made a finding of no significant impact, predicated upon a modified mining plan subject to stipulations and mitigating measures.

(3) Certificate of reasonable assurance (section 401 of the Clean Water Act, as amended, 33 U.S.C. § 1341 (1982)). Before the U.S. Army Corps of Engineers may issue its permit, the State must first examine the proposed action and verify the plan will not violate State water quality standards. The certificate was issued by the Alaska Department of Environmental Conservation on February 21, 1984, subject to environmental stipulations adopted by BLM.

(4) Alaska Department of Fish and Game permits (Alaska Stat. § 16.05.870 (Supp. 1982)). A party proposing stream diversions, stream crossings, or mining operations within a streambed is required to obtain permits from ADF&G. After exhaustive review by this agency, the necessary permits were issued, subject to mitigating measures adopted by BLM.

(5) Waste disposal permit (Alaska Stat. § 46.03.100 (1982)). Before water used in the mining operation may be discharged back into the environment, this State permit must be obtained. Stipulations imposed to prevent pollution were incorporated in the mining plan by BLM.

(6) Consistency approval (Alaska Stat. § 46.40.010 (1982); Alaska Admin. Code tit. 6, Ch. 80 (July 1978). The State evaluated the proposed operations for consistency with coastal management objectives. The review involved research and opinions from various experts and addressed issues such as impacts on natural vegetation, water quality, fish and wildlife habitat, and natural waterflow. A thorough report was prepared and an affirmative determination was rendered, subject to several restrictions which were incorporated in the mining plan.

The record indicates that factors identified as relevant to the proposed plan as a result of these various government reviews were considered in the environmental assessment and discussed in the EA. For each identified area of concern, one or more measures have been implemented by the agencies to mitigate potential adverse environmental effects. The respective restrictions result from an application of the knowledge and experience for which each agency was established. Appellants' environmental protest is a challenge to reported conclusions of experts employed by the several agencies responsible for monitoring environmental quality. Where a matter addressed to BLM is within the competence of other agencies of the federal or local governments, BLM may defer to those agencies unless their conclusions are successfully rebutted. See, e.g., James I. Thompson, 51 IBLA 154, 161 (1980). See also Baltimore Gas & Electric Co. v. Natural Resources Defense Council Inc., supra at 107 (deference given when reviewing predictions of an expert agency). During review of the mining plan by the various agencies, appellants were given the opportunity to discuss or challenge the assembled research data and opinions. The record indicates comments and challenges were considered and that the agencies' conclusions resulted from a thorough analysis of comments and evaluation of identified problems. Appellants' arguments and offered proofs fail to provide an independent basis upon which to question BLM's decision, grounded on opinions and conclusions rendered by those other government agencies.

BLM's decision rests upon an environmental review which contains a detailed evaluation of identifiable impacts and is sufficient to support an informed judgment. Appellants' arguments appear to be little more than a difference of scientific opinion with BLM over the effectiveness of the restrictions imposed on Northland. Such a difference of opinion is insufficient to overcome BLM's determination for which there is abundant support in the record. See Oregon Shores Conservation Coalition, 83 IBLA 1, 6 (1984); In re Otter Slide Timber Sale, 75 IBLA 380, 384 (1983).

The mechanisms established by BLM and the other agencies monitoring the environmental quality either enjoin or penalize Northland in the event of noncompliance with the imposed stipulations or mitigating measures. The agencies have effectively ensured that potential impacts have been minimized and that the terms of the stipulations are met. We, therefore, accept BLM's position that significant impacts will not occur under the conditions within which Northland is required to operate.

[2] Under the direction of NEPA, an agency is required to "study, develop, and describe appropriate alternatives * * * in any proposal which involves conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(e) (1982). Appellants contend BLM neglected to consider other alternatives and assert that, as a result, an EIS must be prepared to compensate for the deficiency. However, the need to consider alternatives is not decisive of the question whether to prepare an EIS. The statutory requirement for consideration of alternatives is an independent issue and is operative even if the agency finds no significant environmental impact. River Road Alliance, Inc. v. Corps of Engineers, supra; City of Aurora v. Hunt, supra at 1468; Nucleus of Chicago Homeowners Association v. Lynn, supra at 231. BLM's review of alternatives focused upon the modified plan. Because Northland is required to strictly conform to the stipulations imposed

upon the plan, the modified plan provides the best feasible basis for review. Where conflicting alternatives are nonexistent, remote, or impractical, the statutory requirement for study and development of alternatives is inapplicable. See City of Aurora v. Hunt, supra at 1467. Since comments to the draft EA failed to show plausible alternatives were overlooked, BLM was not obliged to create other alternative schemes of operation.

Appellants have argued that Council on Environmental Quality (CEQ) criteria mandate preparation of an EIS. CEQ identifies certain factors it considers important in determining whether an EIS should be prepared. See 40 CFR 1508.27; 46 FR 18026, 18038 (Mar. 23, 1981). Appellants contend six of those factors apply here. However, five of the factors cited by appellants become irrelevant where, as here, the identified impacts are minimized by mitigating measures. The lone remaining criterion encourages the environmental reviewer to scrutinize "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial." 40 CFR 1508.27(b)(4). Appellants elaborate upon the opposition raised against the proposed mining plan. However, the suggestion that the word "controversial" means "opposition" has been rejected. River Road Alliance, Inc. v. Corps of Engineers, supra; Town of Orangetown v. Gorsuch, 718 F.2d 29, 39 (2d Cir. 1983); Rucker v. Willis, 484 F.2d 158, 162 (4th Cir. 1973). The existence of public opposition cannot be the element to topple the balance in favor of preparing an EIS. River Road Alliance, Inc. v. Corps of Engineers, supra. Rather, the term "controversial" refers to cases where a substantial dispute exists as to the size, nature, or effect of the action. Rucker v. Willis, supra. The proposed plan, as modified and restricted, is not controversial in the sense that word is used by the regulation, and the CEQ criteria is inapplicable to the present circumstances.

[3] Section 810(a) of ANILCA, 16 U.S.C. § 3120(a) (1982), requires an agency to follow certain procedures should its actions permitting use or disposal of public lands "significantly restrict subsistence use." Appellants contend those procedures, including a hearing near the affected area, should have been applied by BLM. In conjunction with this argument appellants also cite section 303(7) of ANILCA, 94 Stat. 2392, which establishes the Yukon Delta National Wildlife Refuge and sets forth the purposes for its existence. The Tuluksak River flows through this refuge at a point several miles downstream from Northland's operation. Included among the identified purposes of the refuge are improvement of water quality and opportunity for subsistence use. See section 303(7)(B)(iii), (iv), 94 Stat. 2393. However, application of the statutorily prescribed procedures under section 810 of ANILCA is limited to situations where subsistence use will be "significantly" restricted. See Kunaknana v. Clark, 742 F.2d 1145, 1151 (9th Cir. 1984). Such occurrence is of course possible from degradation of the environment. Northland's mining operation will be monitored by ADF&G and appropriate stipulations and mitigating measures have been adopted to protect local fisheries. Because the effects of the mining operation are to be minimized, the threshold for applying the statute is not met. Thus, BLM is not required to apply those section 810(a) procedures.

The primary issue on appeal is the purported failure of BLM to assure that Northland's proposed operations will not result in undue environmental degradation. See 43 CFR 3809.0-6. BLM's approval of the mining plan was

the culmination of expert research and review by several Government agencies. Appellants have not presented independent evidence to show BLM abrogated its administrative duties in approving Northland's plan. This Board has held that a BLM management decision will be upheld on appeal where the decision is based on an EA which reflects an evaluation of the environmental impacts sufficient to support an informed judgment. Oregon Shores Conservation Coalition, supra at 5, and cases cited therein. While appellants' experts have provided some criticism of portions of technical reports relied upon by the EA, their disagreement on the meaning of some data is not found sufficient to require further study.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal by Jeffrey W. Sanders is dismissed and the decision appealed from by the other appellants is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge